

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES

STATE OF MONTANA

In the matter of the complaint)	
against Ray Nixon, Donald E. Shaw,)	Summary of Facts
and Ronald V. Snyder, candidates)	and Statement of
for Lincoln County Sheriff, Libby,)	Findings
Montana.)	

Ron Masters of 276 Underwood Road, Libby, Montana, in a complaint filed with this office on June 6, 1994, alleges violations of election law by Ray Nixon, Donald E. Shaw, and Ronald V. Snyder, candidates for Lincoln County Sheriff, Libby Montana. Specifically, Masters asserts that these named candidates violated a campaign practice statute by stating in a local newspaper who they intended to name as undersheriff. In response to a printed questionnaire entitled "Western News Sheriff's Survey," each candidate was asked a series of questions including, "Who do you intend to name as undersheriff?" Masters declined to answer this question while Nixon, Shaw, and Snyder answered.

The statute cited as the basis for the allegation is section 13-35-214, Montana Code Annotated (MCA), titled "Illegal influence of voters," which provides in pertinent part:

No person, directly or indirectly, by himself or by any other person on his behalf, for any election, to or for any person on behalf of any elector or to or for any person, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue, may:

(2) promise to appoint another person or promise to secure or aid in securing the appointment, nomination, or

election of another person to a public or private position or employment or to a position of honor, trust, or emolument, in order to aid or promote his nomination or election, except that he may publicly announce or define what is his choice or purpose in relation to an election in which he may be called to take part, if elected.

The results of an investigation of the alleged violations are set forth in the following summary of facts.

Summary of Facts

(1) All those named in the complaint were candidates for Lincoln County Sheriff in the 1994 primary election. Nixon is currently serving as sheriff and is seeking re-election to a third term.

(2) Phone inquiries to the Office of the Commissioner of Political Practices were made by Masters, the complainant, and Bob Kamena, campaign manager for Snyder. Both were informed of the requirements of section 13-35-214, MCA, and how paid political printed materials cannot be used if they promise a job to a named person and therefore are used to solicit votes for the candidate.

Both inquiries were given the background of a 1990 complaint when a candidate for sheriff in Sweet Grass County was investigated and found not to be in violation for answering a reporter's question.

(3) In a radio debate on June 3, 1994, commentator, Roger Shields, asked each candidate a question regarding his choice for appointment of an undersheriff. All candidates, including Masters, named their choices in response to the question.

(4) The "Sheriff's Survey" in Western News was the basis for a June 3, 1994 election section article, "Last Look at the Candidates for Lincoln County Sheriff."

(5) Each candidate received identical questionnaires with the following preface, "Answers to the following questions will be printed in the Western News on Friday, June 3, the last newspaper to come out prior to the primary election on June 7. If you choose not to return the survey, we will make note of that in the paper and print only those responses we receive from the other candidates."

(6) Joe Chopyak, reporter for the Western News, said the answers to the questionnaire were printed verbatim and were kept confidential until they were published.

(7) Masters answered the question "Who do you intend to name as undersheriff?" by stating; "I do have someone in mind for undersheriff. Due to the campaign laws of the state of Montana I am legally bound not to publish his name. Page 11 Section 13-35-214 Montana Laws relating to campaign finance and practice."

(8) Ray Nixon in his response to the complaint stated that he never promised nor offered Orville Thorn the position of undersheriff again because he already holds the position. The response published in the Western News stated, "Orville Thorn will continue to be my undersheriff."

(9) Ronald V. Snyder replied to the allegation by stating that he was responding to a written questionnaire with a specific question posed to all the candidates. He used the precedent in a

Sweet Grass County decision where a candidate for sheriff answered a similar question posed by a news reporter and was found not to be in violation of 13-35-214, MCA. He therefore believed his response was legal since he was not soliciting votes, but merely answering a question. He further stated that he was aware that Masters stated in a KLCB radio debate that he would appoint Bill Cade as his undersheriff.

(10) Shaw responded in an interview that he had been informed that, as long as he didn't promise a job, but used the phrase "I would choose" he would remain within the law. His response reflected this choice of words and his intention was not to solicit votes, but merely to answer the question. He further stated that the newspaper reporter informed him that it was okay as long as you are responding to a direct question from the press.

(11) Joe Chopyak, Western News reporter, when interviewed about the development of the questionnaire, indicated that the questions were developed by newspaper staff with the purpose of informing the voters about the candidates. There was no intent to influence the outcome of the race, but the question, "Who do you intend to name as undersheriff?" was asked strictly as an informational item important to the electors.

(12) Masters was advised that his campaign materials featuring himself with Cade, his intended undersheriff appointee, would not be permissible because by doing so he would be actively soliciting votes. He subsequently changed the format on his campaign materials to delete reference to his intended appointee.

STATEMENT OF FINDINGS

Section 13-35-214, MCA, provides in relevant part:

No person, directly or indirectly, by himself or by any other person on his behalf, for any election, to or for any person on behalf of any elector or to or for any person, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue, may:

(2) promise to appoint another person or promise to secure or aid in securing the appointment, nomination, or election of another person to a public or private position or employment or to a position of honor, trust, or emolument, in order to aid or promote his nomination or election, except that he may publicly announce or define what is his choice or purpose in relation to an election in which he may be called to take part, if elected.

Violation of section 13-35-214, MCA, is a misdemeanor. Section 13-35-103, MCA.

The language of the statute is difficult and ambiguous at best, especially in view of the last clause which appears to establish an exception under certain vaguely defined circumstances. However, applying the underscored language of the statute to the facts in this case, it is clear that a threshold requirement to the establishment of a violation of the statute is some indication that the candidates who answered the question--Nixon, Shaw, and Snyder--were acting with the purpose of inducing electors to vote in favor of themselves. Evidence does not support that they responded with that purpose in mind. Rather, evidence shows that the question was framed by the staff at the Western News, not for the purpose of influencing a favorable vote for any candidate, but strictly for the information of the Lincoln County electors. Each of those

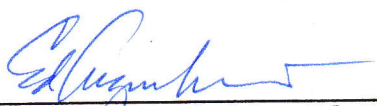
answering the question with the name of the proposed undersheriff were not using paid political advertisements or campaign materials in responding to a newspaper reporter's question.

Each candidate alleged to be in violation denied the allegation and had plausible explanations ranging from careful use of words on the part of Shaw to say, "I would choose" to indicate his answer; to a flat denial from Nixon based on the notion that the current undersheriff would "continue to be" and therefore was not promised the position because he already held it; to Snyder who was merely answering a newspaper questionnaire requesting the name of who he intended to name as undersheriff. No further construction of the statute is necessary, since the requisite purpose essential to establishment of a violation of the statute is absent.

CONCLUSION

Based on the facts and these findings, I conclude that Lincoln County Sheriff candidates Nixon, Shaw, and Snyder did not violate the campaign practice law that prohibits a person from illegally influencing voters.

DATED this 3rd day of August, 1994.



Ed Argenbright, Ed.D.
Commissioner